

## **GENERAL TERMS AND CONDITIONS OF SALE AVIOCOM**

### **1. GENERAL**

- 1.1 These terms and conditions apply to all quotations, offers, orders and deliveries and to all contracts entered and to be entered into by Seller and Buyer pertaining to products and/or services by Seller and all those Seller makes use of, and can only be added to or adapted by a separate written agreement between Seller and Buyer.
- 1.2 Unless explicitly agreed to otherwise, Seller expressly rejects Buyer's general terms and conditions and will only enter into contracts with Buyer based on these general terms and conditions, nor will Seller accept any of Buyer's terms and conditions of a later date.
- 1.3 Unless stipulated otherwise in writing, quotations will be valid for only 2 weeks from the date of the quotation. Quotations are not binding and if necessary, may be withdrawn by Seller.  
Seller's offers to Buyer shall not bind Seller, in particular not with reference to quantity, price and delivery times. No contractual relationship shall exist until one of Seller's competent employees has confirmed an order or agreement in writing or by email to the Buyer.
- 1.4 If the nature or volume of the products is such that an order confirmation is not necessary or usually not sent within the existing relationship with the Buyer, the start of the delivery of the products will be considered to constitute the confirmation of the order.
- 1.5 The Buyer's orders shall specify the product that is being ordered (with distinctive product number or specifications), delivery time, price, quantity, location of delivery of the products, the address the invoice is to be sent to, any specific wishes in respect of packaging, labelling or insurance, and when known or when the product is ordered to be used for military, nuclear, chemical and/or biological weapons or otherwise for purposes, which are subject to controlled restrictions, the name of the end user.
- 1.6 Buyer is aware that Seller is a distributor of products and therefore acquires its products from third parties according to specifications that Buyer provides to Seller.
- 1.7 The Buyer is not allowed to copy or imitate Seller's logo or registered trademarks, nor to use, copy or imitate the logos or registered trademarks of suppliers of products in which Seller trades. Any unauthorized use thereof is prohibited.

### **2. DELIVERY AND/OR PERFORMANCE**

- 2.1 If delivery is to take place at the delivery address, the Incoterms DDP (applicable at the

time of establishment of the agreement) apply.

- 2.2 Shipping or delivery dates are indicative. These will apply only when guaranteed in writing, except in cases of force majeure.

Unless expressly agreed otherwise in writing, a late dispatch or delivery does not constitute an entitlement to damages or the right to refuse the delivery, to comply with the own obligation or to suspend it, to dissolve the contract between Seller and Buyer wholly or partly, or to have it declared void.

- 2.3 Buyer shall be responsible for the unloading of the products. The packaging may not be returned.

- 2.4 Notwithstanding the provisions of paragraph 1 of this article, it may be agreed that delivery is made 'ex-warehouse' from the Seller or the supplier of the Seller. In those cases, the Incoterms EXW (applicable at the time of establishment of the agreement) apply, which means that the time of transfer and thus the moment at which the responsibility for the products passes from Seller to Buyer is the time when the products leave the warehouse in question.

- 2.5 Unless agreed otherwise, the unencumbered and unconditional property of the products transfers to the Buyer at the time of the transfer of the risk in respect of the products, as defined in the Incoterms, latest version, applicable at the time of the establishment of the agreement.

In case of direct transport of the products from the address of the supplier of the Seller to that of the Buyer in case of a DDP or EXW agreed delivery, the property of the products transfers from Seller to Buyer upon delivery to the Buyer in the event of a DDP-delivery, and upon departure from the warehouse of the Supplier in the event of an EXW-delivery.

### **3. PRICES**

- 3.1 The prices shall be expressed and payable in Euro and apply to products supplied within 30 days from the time of the offer, unless otherwise agreed. If the Seller has effected a price increase in the mean time, Seller may pass on this increase after 30 days. Not included are costs related to testing, specific Buyer's certification or inspection requirements and such, unless specifically mentioned in the agreement.

- 3.2 Prices are exclusive of taxes and/or excise duties, which are for the account of Buyer.

### **4. PAYMENT**

- 4.1 Payment shall be made within the agreed payment period and in the absence thereof, within 30 days of the invoice date, without netting or deduction.

4.2 In case of late payment, Buyer is in default by operation of law without summons or notice of default, and is liable to pay an interest of 1% per month during the period in which the payment is not forthcoming, without prejudice to any other rights of the Seller.

All costs, including legal costs, made in order to obtain payment of the amount owed by the Buyer, shall be borne by the Buyer.

4.3 Buyer is not entitled to any suspension of a payment to Seller in the event of a possible claim, nor to any compensation if and as long as there is no relevant claim awarded by the Court in a judgment it declared provisionally enforceable.

4.4 If the Buyer is negligent in its commitments toward Seller, Seller may additionally, at its discretion, suspend (warranty) obligations, defer further deliveries to the Buyer, reclaim products it delivered before, demand advance payment regarding following deliveries of products already ordered, and exercise all other legal remedies assigned to it by law. Seller may also take several of the above-mentioned measures simultaneously, provided that do not conflict with each other.

## **5. WEB SHOP SALES**

5.1 These General Conditions apply integrally for purchases through the website [www.aviocom.nl](http://www.aviocom.nl). In addition, the following conditions mentioned in this paragraph apply to web shop sales, which - if and in so far as they differ from other provisions referred to in these General Conditions - apply instead.

5.2 By using the web site to order products, Buyer confirms that he is authorized to conclude a legal agreement and has reached the age of 21 years. Seller may request a proof of identity and - in the case of a company - an extract from the Trade Register before proceeding to deliver. The Seller is not held to deliver if these data raise any doubts, and the advance payment will be refunded.

5.3 Unless expressly agreed otherwise in writing or by email), purchases are to be paid to the Seller in advance, by transfer of the purchase price, or by payment with a valid credit card.

5.4 The website may contain hyper links to other sites on the Internet, which are not published or maintained by a seller. Anything published there does not contain a recommendation of the Seller, and the Seller shall not bear any responsibility for the content of these publications.

5.5 The structure, content and layout of the Seller's website is subject to copyright protection and may not be used, reproduced, modified or imitated without the Seller's prior written consent.

## **6. CERTIFICATE/DOCUMENTATION**

- 6.1 The products to be delivered by the Seller comply with the applicable laws, standards and regulations of the Dutch authorities and the relevant binding EU legislation, applicable at the time of the conclusion of the agreement.
- 6.2 If applicable, Seller will provide the associated certificate and/or documentation with the products.

## **7. WARRANTY**

- 7.1 Seller guarantees Buyer that the products are free of non-conformity at the time of delivery.  
Non-conformity shall mean (a) non-compliance with government regulations or specifications from suppliers of seller, (b) non-compliance of the products to the agreed specifications, (c) delivery of less than 90% of the requested quantity of products of the order, or (d) third parties' rights attached to the products, which are reasonably unacceptable to the Buyer.
- 7.2 In case of non-conformity as stipulated above, under this warranty the Seller is held to replace the defective product and to make up the shortfall in products. If replacement or additional products which do not give rise to non-compliance cannot be supplied, the Buyer is entitled to withdraw from the contract, or to effect a settlement in proportion to the quantity of products not giving rise to non-conformity.
- 7.3 Seller may require that the Buyer of the products delivered by the Seller to the Buyer destroys or returns the products that lead to non-conformity, at the Seller's discretion. In case of returning, this shall be at the expense of the Seller.  
In this, the Buyer is held to follow all the relevant instructions from the Seller.
- 7.4 Buyer will immediately inspect the products of the Seller as to quantity, weight and packaging and register any objection on the freight documents, and will also perform a representative quality test on-site.  
Any defect noted by the Buyer is to be reported to the Seller in writing, without delay and no later than within one week from delivery of the products. If, notwithstanding the first inspection, a hidden defect is present, the same time limit applies, to be calculated from the time that the Buyer could reasonably detect the defect.  
The notification must be clearly specified/described.
- 7.5 Buyer agrees to an inspection, on-site, by or on behalf of the Seller, at the Seller's discretion, and will provide all reasonable assistance thereto.

## **8. LIMITATION OF LIABILITY**

- 8.1 If the Seller does not, not timely or not properly meet its obligations and is liable, the Buyer is entitled to compensation of the direct damage, i.e. up to the invoiced value of the product supplied. Seller is never liable for any indirect or consequential loss, including, loss of profit, loss due to delay in delivery, loss of goodwill or damage to the reputation. This also applies if the product carries an inherent risk of the damage referred to.
- 8.2 In case of intent or gross negligence on the part of the Seller, in derogation from the provisions of paragraph 1, the liability for direct damages is limited to the applicable sum insured by the Seller. Liability for indirect or consequential damages is excluded.
- 8.3 If in case of liability of the Seller, damage occurs to persons within the meaning of bodily injury or death, the liability is also limited to compensation of the direct damage. The liability for personal damages is always limited to the maximum amount paid by the Seller's insurer in such cases.
- 8.4 Seller is not liable for any defects or deficiencies which to a greater or lesser extent are a consequence of, or at least related to any change, storage, maintenance, transport, or unsuitable or uncommon use.
- 8.5 Buyer shall indemnify Seller for claims of third parties in connection with the damage for which Seller in its relationship with Buyer is not liable.
- 8.6 Any right to damages shall be extinguished after a period of six months.
- 8.7 The cumulative liability on any legal ground will never exceed the maximum amount paid by the Seller's insurer in such cases.

## **9. FORCE MAJEURE**

- 9.1 Seller is not liable for the non, late or improper performance of its obligations, in so far and as long as, the failure to perform is delayed, prevented or impeded partly or entirely, temporarily or permanently, by force majeure.
- 9.2 Force majeure, inter alia, is understood to include: war, boycott, destruction, extreme weather conditions, epidemics, fire and strike and such. It also includes the compliance with requirements or requests of a public authority or independent supervisor, restrictions in the supply of products outside the control of the Seller, and facts or circumstances that could not and reasonably should not have been foreseen by the Seller, and of such a nature that the agreement would not have been entered into, or not on the same conditions, if the Seller had been aware of the circumstances at the time of entering into the agreement.
- 9.3 In case of force majeure, the Seller will notify the Buyer thereof as soon as possible. If

after the end of the force majeure event, compliance by the Seller is still possible, the execution of the agreement shall be suspended. If this takes longer than 30 calendar days, any of the parties is entitled to dissolve the agreement with immediate effect by written notice to the other party and without judicial intervention. In that case, the party affected by the force majeure event is only liable to pay compensation in so far as it has had an advantage as a result of the force majeure event that it would not have had in case of a proper compliance.

## **10. PATENT DISCLAIMER**

10.1 Seller has no influence on the composition of the products and may, subject to gross negligence on its part, not vouch for claims of third parties regarding the infringement of any patent, trademark or trade secret and therefore, shall not indemnify the Buyer accordingly.

If and to the extent that the Seller itself can freely dispose of these rights, it will transfer these in part to the Buyer, to the extent necessary for the Buyer to use the products/to apply the products for the purpose for which they are sold by the Seller, without having to give up its own rights.

## **11. COMPLIANCE**

11.1 The EU-based Buyer ensures that it does and will comply with all relevant EU laws and regulations, as well as with the laws and regulations of the country in which it is established. More in particular, the Buyer has to abide by laws and regulations relative to trading in, holding, transporting and using chemicals.

Furthermore, the same applies to the required permits, import permits, export restrictions and so forth under European laws and regulations and the laws and regulations of the country in which the Buyer is established, as well as the country of destination.

Buyer undertakes to keep accurate documentation thereof.

Seller can never be held liable in this respect.

The above also applies the Buyer that is established outside the EU, with the understanding that 'the EU laws and rules in the country of establishment', should be understood to mean 'the international rules and regulations'.

11.2 If a Buyer instructs a charterer to arrange the export of products, the charterer acts on behalf of the Buyer and the Buyer is responsible if the charterer fails to meet any export requirement.

The Seller will provide the charterer with all available information for transport in its

possession, but will not be liable for the accuracy or completeness thereof.

- 11.3 The Buyer shall indemnify the Seller for any fine, penalty or other liability of public interest or imposed by any other competent governmental authority.
- 11.4 If the Buyer is the proprietor of the product sold by the Seller to the Buyer, the Buyer will provide all relevant information, including the export classification data.
- 11.5 Both Parties understand that certain products, including but not limited to products of American origin, may be subject to restrictions on exports to the rest of the world. Prior to such a proposed export, the Buyer will have to ascertain whether such restrictions apply and ensure that he will comply with them.

## **12. TERMINATION**

12.1 Seller has the power, without prejudice to its other rights and without judicial intervention or summation being required, to cease the deliveries to the Buyer (whether or not temporarily) and/or to terminate the agreement by written notification at a given date, without obligation to pay any compensation, for whatever reason:

- in case of insolvency proceedings or a (provisional) suspension of payment, the provision of an extra-judicial agreement or attachment to the side of the Buyer;
- in the event of cessation of the Buyer's company or such a change in its general direction and/or ownership, that a continuation of the agreement cannot reasonably be expected from the Seller;
- if the Buyer acts in breach of the agreement, or any act or omission of the Buyer harms the Seller's or the Seller's products' reputation.

## **13. MISCELLANEOUS**

13.1 The Buyer is bound to confidentiality regarding (the contents of) this agreement, including the pricing, except for any obligation to publication to any party under the law.

13.2 The Buyer is not entitled to transfer this agreement or parts thereof to a third party or an establishment of the Buyer in another country without the prior written consent of the Seller.

The Seller is only entitled to do so without the written consent of the Buyer if it is transferred to the same type of business as that of the Seller or to larger company that has a similar department.

- 13.3 Summations shall be in writing, with acknowledgement of receipt, at the address of Buyer indicated on the order, or the address of the principal place of business of the Buyer at the Seller's discretion. For the Buyer, the address of the Seller is the address where, according to the Trade Register, the Seller is established.
- 13.4 Seller is entitled to amend these General Conditions of Sale Aviocom. The change will apply from the time that Seller has informed Buyer on this matter in writing.
- 13.5 Without prejudice to the provisions of the previous paragraph, changes to the agreement are valid only to the extent that these are agreed in writing.
- 13.6 These general conditions have been translated in different languages (among other and in particular English and German). If a difference in interpretation arises between the Dutch version and a version in another language, the Dutch version is decisive.

#### **14. APPLICABLE LAW**

- 14.1 The agreement shall be governed by Dutch law, which applies exclusively. The United Nations Convention on Contracts for the international sale of goods (the 'United Nations Convention') expressly does not apply.

#### **15. DISPUTES**

- 15.1 Any disputes will be brought before the competent court in Amsterdam exclusively.